

_____ BILL NO. _____

INTRODUCED BY _____

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE WILDLAND-URBAN INTERFACE DEVELOPMENT STANDARDS ACT; ESTABLISHING LEGISLATIVE FINDINGS; ESTABLISHING A PURPOSE; ESTABLISHING DEFINITIONS; PROVIDING FOR AN EXCEPTION; DESIGNATING A WILDLAND-URBAN INTERFACE AREA; REQUIRING REGULATIONS, MAPS, AND DESCRIPTIONS; ALLOWING LOCAL WILDLAND-URBAN INTERFACE REGULATIONS; PROVIDING FOR A PUBLIC HEARING; ALLOWING BOUNDARY ADJUSTMENTS; ALLOWING A GOVERNING BODY TO ESTABLISH FEES; PROVIDING FOR THE ENFORCEMENT OF VIOLATIONS; PROVIDING PENALTIES; PROVIDING A LOCAL GOVERNING BODY OR THE DEPARTMENT THE AUTHORITY TO ENTER AND INVESTIGATE LANDS OR WATER; REQUIRING THE DEPARTMENT TO DELINEATE THE WILDLAND-URBAN INTERFACE; REQUIRING THE DEPARTMENT TO REVIEW AND UPDATE THE DELINEATION OF THE WILDLAND-URBAN INTERFACE; ALLOWING THE DEPARTMENT TO ADOPT LAND USE REGULATIONS; ALLOWING THE DEPARTMENT TO SUBSTITUTE LOCAL CONTROL FOR A STATE PERMIT SYSTEM; AND AMENDING SECTIONS 7-33-202, 7-33-2210, 76-13-102, 76-13-105, AND 76-13-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 14] may be cited as the "Wildland-Urban Interface Development Standards Act".

NEW SECTION. Section 2. Legislative findings. The legislature finds that:

(1) the increasing frequency and intensity of wildfires within the state of Montana cause loss of life, damage to property, and disruption of commerce and governmental services, all of which are detrimental to the health, safety, welfare, and property of the occupants of impacted lands and the people of this state;

(2) the public interest necessitates management and regulation of high-risk wildfire areas in a manner consistent with sound land use and resource management practices that will prevent and alleviate wildfire-related threats to life and health and reduce private and public economic losses; and

(3) local governments need a regulatory framework in which to establish and enforce development

standards and wildfire mitigation measures within lands identified as the wildland-urban interface.

NEW SECTION. Section 3. Policy -- purpose. The policy and purposes of [sections 1 through 14] are to:

(1) guide development of high-risk wildfire areas of the state in a manner consistent with legislative findings;

(2) recognize the natural ecological impacts of wildland fire and forest practices;

(3) provide technical assistance to local governments in the management of wildfire areas and the wildland-urban interface;

(4) coordinate state and local management activities for wildfire areas;

(5) encourage local governments to manage development in high-risk wildfire areas, including the adoption, enforcement, and administration of land use regulations;

(6) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive wildland-urban interface management program for the state;

(7) restrict or prohibit land uses that are dangerous to health or safety of property in times of wildfire or that cause increased potential of wildfire;

(8) require that land uses vulnerable to wildfire, including public facilities that serve the uses, be provided with local fire protection at the time of initial construction;

(9) develop and provide information to identify lands that are unsuitable for certain land uses because of wildfire hazard;

(10) distinguish between land use regulations applied to the wildland-urban interface and land use regulations applied to land outside the wildland-urban interface;

(11) apply more restrictive land use regulations within the wildland-urban interface;

(12) ensure that the regulations and minimum standards adopted under [sections 1 through 14] balance the greatest public good with the least private injury; and

(13) reduce state and local government exposure to significantly higher costs for fire suppression in the wildland-urban interface.

NEW SECTION. Section 4. Exception. An agricultural activity and the commercial production of farm products are exempt from [sections 1 through 14].

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2 **NEW SECTION. Section 5. Designation of wildland-urban interface areas.** (1) The local governing
3 body may designate a wildland-urban interface area upon request by a local fire protection agency.

4 (2) The local governing body may designate a wildland-urban interface area based on the use of all
5 available local, state, and federal wildland-urban interface maps and information, including those established in
6 [sections 6 and 12], and following comments from a local fire protection agency.

7 (3) The local governing body may designate a wildland-urban interface area for the purpose of
8 implementing development regulations.

9

10 **NEW SECTION. Section 6. Regulations required -- maps and descriptions required.** (1) A
11 wildland-urban interface area may be designated by ordinance or resolution and must include a map and legal
12 description, filed with the county clerk and recorder. If the local governing body makes the designation of a
13 wildland-urban interface area, the local governing body shall concurrently adopt regulations and shall administer
14 and enforce the regulations in cooperation with the local fire protection agency.

15 (2) Property mitigation measures may be adopted pursuant to best practices as determined by the
16 department of natural resources and conservation and the local fire protection agency.

17 (3) Building standards may be adopted pursuant to standards determined by the department of labor and
18 industry.

19

20 **NEW SECTION. Section 7. Local wildland-urban interface regulations.** (1) The local governing body
21 may, by ordinance or resolution, adopt and provide for the administration and enforcement of wildland-urban
22 interface regulations providing for:

- 23 (a) the orderly development of the jurisdictional area;
24 (b) the coordination of roads to provide for access to other roads, both planned and existing;
25 (c) the dedication of land and easements for roadways and public utilities;
26 (d) the provision of adequate open spaces and survivable space;
27 (e) the provision of adequate environmental conservation, vegetation management and forest practices,
28 adequate water supply for wildfire protection, and drainage;
29 (f) subject to the provisions of Title 76, chapter 4, the regulation of sanitary facilities;
30 (g) the coordination of residential development to utilize wildland fire protection practices;

1 (h) the provision of requirements for the use of fire resistant building materials;

2 (i) the avoidance of development in the wildland-urban interface that would involve unnecessary
3 environmental degradation and danger of injury to health, safety, or welfare by reason of natural or constructed
4 hazards, including but not limited to fire and wildland fire or the lack of water, drainage, access, transportation,
5 or other public services that would necessitate an excessive expenditure of public funds for the prevention and
6 suppression of wildfires;

7 (j) defining nonconforming uses, measures to be taken to mitigate the nonconforming uses, and the
8 expiration of the uses in accordance with this chapter;

9 (k) providing for an inventory of existing land uses, structures, and trees within the wildland-urban
10 interface;

11 (l) establishing a development permit system for changes to existing land uses, including changes that
12 affect structures or trees, and for new land uses, structures, or trees;

13 (m) providing a variance procedure from the literal application of the regulations, including the conditions
14 for granting a variance.

15 (2) The regulations must establish a wildland-urban interface development permit application process.
16 All buildings suitable for habitation constructed after the adoption of the regulations must comply with the
17 regulations.

18 (3) In establishing or amending regulations and in the development permit application process, the local
19 governing body shall consider recommendations from local fire protection agencies.

20
21 **NEW SECTION. Section 8. Public hearing -- boundary adjustments.** (1) Before a local governing
22 body designates a wildland-urban interface area and adopts regulations, the local governing body shall hold at
23 least one public hearing. The notice of the public hearing must be published as provided in 7-1-2121 or 7-1-4127.

24 (2) The boundary of the wildland-urban interface may be adjusted following notice and a public hearing.
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26 **NEW SECTION. Section 9. Fees.** The governing body may establish reasonable fees to be paid by the
27 landowner to defray the expense of reviewing the wildland-urban area development application.
28

29 **NEW SECTION. Section 10. Violations and penalties.** (1) A local governing body may enforce the
30 regulations adopted under [section 7].

(a) A violation of [sections 1 through 14] or of a resolution or ordinance adopted pursuant to [sections 1 through 14] is a misdemeanor and is punishable by a fine of up to \$500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. The violation is an absolute liability offense as provided for in 45-2-104.

(b) The governing body may also provide a civil penalty not to exceed \$100 for a violation of [sections 1 through 14] or of a regulation adopted pursuant to [sections 1 through 14]. Each day of violation constitutes a separate violation.

(2) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, structure, or land is used in violation of [sections 1 through 14] or of any resolution adopted under [sections 1 through 14], the local governing body, in addition to other remedies, may take appropriate action or begin proceedings to:

(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(b) restrain, correct, or abate a violation;

(c) prevent the occupancy of a building, structure, or land; or

(d) prevent any illegal act, conduct, business, or use in or near the premises.

(3) The county shall attempt to obtain voluntary compliance at least 10 working days before filing a complaint for a violation of [sections 1 through 14] that is subject to the penalties under subsection (1).

(4) The granting of a permit under [section 7 or 12] does not affect any other type of approval required by any other statute, ordinance, or resolution of the local governing body, of the state or any political subdivision, or of the United States but is an added requirement.

NEW SECTION. Section 11. Authority to enter and investigate lands or water. (1) The local fire protection agency, the local governing body, or the department may make reasonable entry upon any land for the purpose of making an investigation, survey, removal, or repair contemplated by [sections 5 through 7, 10, and 12].

(a) The local fire protection agency, the local governing body, or the department shall provide written notice of entry by personal delivery to the owner, owner's agent, lessee, or lessee's agent whose land will be entered unless the local fire protection agency, the local governing body, or the department has received written consent to enter.

(b) If the persons identified in subsection (1)(a) cannot be found, the local fire protection agency, the local governing body, or the department shall affix a copy of the notice to one or more conspicuous places on the property.

(2) An investigation of the development, use, or nonconforming use must be made by the local fire protection agency, the local governing body, or the department on its own initiative, on the written request of three owners of land abutting the wildland-urban interface, or on written request of a political subdivision. Upon the request of an owner, owner's agent, lessee, or lessee's agent whose lands will be entered to undertake the investigation, the local fire protection agency, the local governing body, or the department shall release the names and addresses of the persons or the political subdivision requesting the investigation.

NEW SECTION. Section 12. Department delineation of wildland-urban interface -- recording -- review and update. (1) Prior to January 1, 2011, and subject to the provisions of this section, the department and the local fire protection agency having jurisdiction shall identify the parcels of property in the state that are considered to be wildland-urban interface parcels, delineate those parcels on maps, and ensure that the maps and information on the maps are available through the Montana cadastral mapping project to the public, local governing bodies, and local fire protection agencies.

(2) (a) Except as provided in subsection (2)(b), the department shall identify a county's wildland-urban interface parcels based on the wildland-urban interface designation developed as a part of the county's completion of a community wildfire protection plan under the Healthy Forests Restoration Act of 2003, 16 U.S.C. 6501, et seq.

(b) If a local governing body has not designated a wildland-urban interface area under [section 5] and adopted regulations under [sections 6 and 7], if the local governing body has not designated a wildland-urban interface following the request of the local fire protection agency under [section 5], or if the department determines that the boundaries of the wildland-urban interface designated in [section 5] are inaccurate or in need of revision, the department shall:

(i) provide notice to the local governing body that the department intends to designate the wildland-urban interface within the local governing body's jurisdictional boundary;

(ii) allow up to 12 months for the local governing body to designate a wildland-urban interface area under [section 5] and adopt regulations under [sections 6 and 7] if the local governing body had begun the process prior to receiving the notice from the department under subsection (2)(b)(i);

(iii) review and consider the analysis of the potential for fire and wildland fire required in 76-1-601(3)(j) of the local governing body's growth policy if a growth policy has been adopted;

(iv) consult with the local governing body and the local fire protection agencies regarding appropriate parcels to designate as wildland-urban interface parcels; and

(v) clearly identify and make available to the local governing body the criteria the department intends to use in designating parcels after the department and the local fire protection agencies create the criteria.

(3) When sufficient data has been acquired by the department, the department shall establish, by order following a public hearing, the designated wildland-urban interface within which a local governing body may establish a land use regulation.

(4) The department shall record a designated wildland-urban interface in the office of the county clerk and recorder of the county in which the wildland-urban interface is designated.

(5) Location of a property within the wildland-urban interface designated under this section may not be the sole reason for assessing additional fire protection fees, impact fees, or other fees against the property.

(6) The department shall report its progress in designating wildland-urban interface parcels to an appropriate interim legislative committee assigned to study wildland fire suppression or to the environmental quality council.

(7) The department shall review each local governing body's wildland-urban interface designation every 5 years, suggest changes as necessary, and maintain accurate maps and other identifying information.

NEW SECTION. Section 13. Land use regulations. (1) Upon transmittal of the wildland-urban interface designation to officials of a local governing body, the local governing body has 24 months from the date of transmittal to adopt land use regulations that meet or exceed the rules established pursuant to 76-13-104(8).

(2) If the local governing body has not adopted a wildland-urban interface designation under [section 5] and adopted regulations under [sections 6 and 7], following a request by the local fire protection agency, the department shall enforce the minimum standards within the designated wildland-urban interface as established under 76-13-104(8) and [section 12], and a nonconforming use may not be established by any person within a wildland-urban interface unless specifically authorized by the department.

(3) A local government that has failed to adopt land use regulations that meet or exceed the minimum standards of the department within the 24-month period may subsequently adopt regulations. If approved by the department, the regulations are effective within the wildland-urban interface and must be administered and

1 enforced by the local government.

2
3 **NEW SECTION.** **Section 14. Substitution of local control for state permit system.** (1) If a local
4 government enacts, pursuant to [sections 5 through 7], ordinances, regulations, or resolutions that meet or
5 exceed the minimum standards of the department and if the administrative and enforcement procedures
6 established for those ordinances, regulations, or resolutions are found acceptable by the department, a permit
7 from the department is not required.

8 (2) If the department determines the local governing body has not complied with the intent, purposes,
9 and provisions of [sections 1 through 3] and the minimum standards adopted under [section 12], the powers of
10 the local governing body may be suspended after a public hearing and the minimum standards adopted by the
11 department must be enforced by the department until the department determines that the local governing body
12 has adopted ordinances, regulations, or resolutions that comply.

13
14 **Section 15.** Section 7-33-2202, MCA, is amended to read:

15 **"7-33-2202. Functions of county governing body.** (1) The county governing body, with respect to rural
16 fire control, shall carry out the specific authorities and duties imposed in this section.

17 (2) The governing body shall:

18 (a) provide for the organization of volunteer rural fire control crews; and

19 (b) provide for the formation of county volunteer fire companies.

20 (3) The governing body shall appoint a county rural fire chief and as many district rural fire chiefs, subject
21 to the direction and supervision of the county rural fire chief, that it considers necessary.

22 (4) Pursuant to 76-13-105(3), the county governing body shall, within the limitations of 7-33-2205,
23 7-33-2206, 7-33-2208, and 7-33-2209, either:

24 (a) directly protect from fire land in the county that is not in a wildland fire protection district, as provided
25 in 76-13-204, or under the protection of a municipality, state agency, or federal agency; or

26 (b) enter into an agreement for wildland fire protection with a ~~recognized~~ local fire protection agency, as
27 that term is defined in 76-13-102.

28 (5) The county governing body may enter into mutual aid agreements for itself and for county volunteer
29 fire companies with:

30 (a) other fire districts;

- (b) unincorporated municipalities;
(c) incorporated municipalities;
(d) state agencies;
(e) private fire prevention agencies;
(f) federal agencies;
(g) fire service areas;
(h) governing bodies of other political subdivisions in Montana; or
(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(6) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209."

Section 16. Section 7-33-2210, MCA, is amended to read:

"7-33-2210. State to be reimbursed for wildland fire suppression activities in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for wildland fire protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a wildland fire emergency on land in that county that is not in a wildland fire protection district, as provided in 76-13-204, or protected through an agreement with a ~~recognized~~ local fire protection agency, as provided in 7-33-2202(4)(b)."

Section 17. Section 76-13-102, MCA, is amended to read:

"76-13-102. Definitions. Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) "Agricultural activity" and "commercial production of farm products" have the meanings provided in 76-2-902.

(2) "Conservation" means the protection and wise use of forest, range, water, and soil resources in keeping with the common welfare of the people of this state.

~~(2)~~(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

1 ~~(3)~~(4) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute
2 in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included
3 when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest
4 land.

5 ~~(4)~~(5) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction
6 associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation,
7 and the management of logging slash.

8 (b) The term does not include activities for the purpose of:

9 (i) the operation of a nursery or Christmas tree farm;

10 (ii) the harvest of Christmas trees;

11 (iii) the harvest of firewood; or

12 (iv) the cutting of trees for personal use by an owner or operator.

13 (6) "Local fire protection agency" means an agency organized for the purpose of providing adequate fire
14 protection as provided in Title 7, chapter 33, or in Title 76, chapter 13.

15 (7) "Local governing body" means the governing body of a city, town, county, or consolidated
16 government.

17 ~~(5)~~(8) "Operator" means a person responsible for conducting forest practices. An operator may be the
18 owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to
19 or entitled to conduct forest practices or to carry out a timber sale.

20 ~~(6)~~(9) "Owner" means the person, firm, association, or corporation having the actual, beneficial
21 ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

22 ~~(7)~~(10) "Person" means an individual, corporation, partnership, or association of any kind.

23 ~~(8) "Recognized agency" means an agency organized for the purpose of providing fire protection and~~
24 ~~recognized by the department as giving adequate fire protection to lands in accordance with rules adopted by~~
25 ~~the department.~~

26 ~~(9)~~(11) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate
27 trees on a defined land area.

28 ~~(10)~~(12) "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming
29 vegetative fuels.

30 ~~(11)~~(13) "Wildfire season" means the period of each year beginning May 1 and ending September 30,

1 inclusive.

2 ~~(12)~~(14) "Wildland" means an area in which development is essentially nonexistent, except for roads,
3 railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.

4 ~~(13)~~(15) "Wildland fire" means a fire burning uncontrolled on forest lands.

5 ~~(14)~~(16) "Wildland fire protection" means the work of prevention, detection, and suppression of wildland
6 fires and includes training required to perform those functions.

7 ~~(15)~~(17) "Wildland fire protection district" means a definite land area, the boundaries of which are fixed
8 and in which wildland fire protection is provided through the medium of an agency recognized by the department.

9 ~~(16)~~(18) "Wildland-urban interface" means the line, area, or zone where structures and other human
10 development meet or intermingle with undeveloped wildland or vegetative fuels."

11

12 **Section 18.** Section 76-13-105, MCA, is amended to read:

13 **"76-13-105. Protection of lands and improvements from fire.** (1) Nonforest lands and improvements
14 may be protected by the department when requested by the landowner at rates determined by the department
15 in those areas where a ~~recognized~~ local fire protection agency is available.

16 (2) Land classified as forest land under 76-13-107 that is within a wildland fire protection district, as
17 provided in 76-13-204, or that is otherwise under contract for fire protection by a ~~recognized~~ local fire protection
18 agency must be protected as provided in 76-13-201 and 76-13-207.

19 (3) Private and public land, whether classified as forest land or otherwise, that is not within a wildland
20 fire protection district or under the protection of a ~~recognized~~ local fire protection agency or a municipality must
21 be protected by a county as provided in 7-33-2202. The county governing body shall either provide direct
22 protection, as provided in 7-33-2202(4), or it shall enter into an agreement for protection with a ~~recognized~~ local
23 fire protection agency."

24

25 **Section 19.** Section 76-13-203, MCA, is amended to read:

26 **"76-13-203. Extension of wildfire season.** In the event of excessive or great fire danger, the ~~period~~
27 wildfire season defined in 76-13-102~~(11)~~ may be expanded when in the judgment of the department dangerous
28 fire conditions exist. When expanded, the department shall give public notice."

29

30 NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 14] are intended to be

1 codified as an integral part of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [sections
2 1 through 14].

3 - END -